



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 180117042-8884-02; RTID 0648-XB751]

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; Purse Seine category annual quota adjustment; inseason quota transfer.

**SUMMARY:** NMFS is adjusting the Atlantic bluefin tuna (BFT) Purse Seine and Reserve category quotas for 2022. NMFS also is transferring 26 metric tons (mt) of BFT quota from the Reserve category to the General category January through March 2022 subquota period. The transfer to the General category is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

**DATES:** Effective [*insert date of filing for public inspection with the Office of the Federal Register*], through December 31, 2022.

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**SUPPLEMENTARY INFORMATION:** Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management

Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The 2022 baseline Purse Seine, General, and Reserve category quotas are 219.5 mt, 555.7 mt, and 29.5 mt, respectively. The General category baseline subquota for the January through March time period is 29.5 mt. Effective January 1, 2022, NMFS transferred 19.5 mt of BFT quota from the December 2022 subquota time period to the January through March 2021 subquota time period resulting in an adjusted subquota of 49 mt for the January through March 2022 subquota time period (86 FR 72857, December 23, 2021).

#### **Annual Adjustment of the BFT Purse Seine and Reserve Category Quotas**

Consistent with § 635.27(a)(4), NMFS determines the amount of quota available to the Atlantic Tunas Purse Seine category participants in the current year, based on their BFT catch (landings and dead discards) in the previous year. As described in § 635.27(a)(4)(v)(A), NMFS makes available to each Purse Seine category participant either 100 percent, 75 percent, 50 percent, or 25 percent of the individual baseline quota allocations based on the previous year's catch, and reallocates the remainder to the Reserve category. NMFS has calculated the amounts of quota available to the Purse Seine category participants for 2022 based on their individual catch levels in 2021. NMFS did not open the Purse Seine fishery in 2021 because there were no purse seine vessels

permitted to fish for BFT and thus no catch in 2021. As a result, each Purse Seine category participant will receive 25 percent of the individual baseline quota amount, which is the required distribution even with no fishing activity under the current regulations. The individual baseline amount is 43.9 mt (219.5 mt divided by five Purse Seine category participants), 25 percent of which is 11 mt. Consistent with § 635.27(a)(4)(v)(C), NMFS will notify Atlantic Tunas Purse Seine category participants of the amount of quota available for their use this year through the Individual Bluefin Quota electronic system established under § 635.15 and in writing.

By summing the individual available allocations, NMFS has determined that 55 mt are available to the Purse Seine category for 2022. Thus, the amount of Purse Seine category quota to be reallocated to the Reserve category is 164.5 mt ( $219.5 \text{ mt} - 55 \text{ mt} = 164.5 \text{ mt}$ ). This reallocation results in an adjusted 2022 Reserve category quota of 194 mt ( $29.5 \text{ mt} + 164.5 \text{ mt} = 194 \text{ mt}$ ), before any further transfers to other categories.

#### **Transfer of 26 mt from the Reserve category to the General category**

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer from the Reserve category to the General category. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by tuna dealers provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including during the winter fishery in the last several years) and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). To date, preliminary landings data indicate that the General category January through March fishery has landed 31.4 mt of the adjusted 49-mt subquota. Without a quota transfer at this time, NMFS would likely need to close the General category fishery, and participants would have to stop BFT fishing activities while commercial-sized BFT remain available in the areas where General category permitted vessels operate. Transferring 26 mt of quota from the Reserve category would result in 75 mt ( $49 \text{ mt} + 26 \text{ mt} = 75 \text{ mt}$ ) being available for the January through March 2022 subquota period and would provide limited additional opportunities to harvest the BFT quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the General category quota to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. Thus, this quota transfer would allow fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable opportunity to harvest available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the BFT fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2022 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2022 landings and dead discards within the adjusted

U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

NMFS also considered the effects of the transfer on the BFT stock and the effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations (established in Recommendation 17-06 and maintained in Recommendation 20-06), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer is in line with these established management measures. Another principal consideration is the objective of providing opportunities to harvest the available General category quota, based on the objectives of the 2006 Consolidated HMS FMP and its amendments, including to achieve optimum yield on a continuing basis and to allow all permit categories a reasonable opportunity to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)). For the General category, this includes providing opportunities equitably across all time-periods.

Given these considerations, NMFS is transferring 26 mt from the adjusted Reserve category quota to the General category January through March 2022 subquota time period. Therefore, NMFS adjusts the General category January through March subquota to 75 mt, and adjusts the Reserve category quota to 168 mt ( $194 \text{ mt} - 26 \text{ mt} = 168 \text{ mt}$ ). The General category fishery will remain open until March 31, 2022, or until the adjusted General category quota is reached, whichever comes first.

### **Monitoring and Reporting**

NMFS will continue to monitor the BFT fisheries closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing [hmspermits.noaa.gov](https://hmspermits.noaa.gov), using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments (*e.g.*, quota adjustment, daily retention limit adjustment, or closure) are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access [hmspermits.noaa.gov](https://hmspermits.noaa.gov), for updates on quota monitoring and inseason adjustments.

### **Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635, and it is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, the transfer from the Reserve category to the General category for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason adjustments to respond to the unpredictable nature of BFT

availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. This fishery is currently underway and delaying this action would be contrary to the public interest as BFT landings could otherwise exceed the adjusted January through March 2022 General category quota and result in an earlier closure of the fishery while fish are available on the fishing grounds. Transferring quota from the Reserve category to the General category does not affect the overall U.S. BFT quota, and available data shows the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota, measures to reallocate quota, and the inseason adjustment criteria. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: January 28, 2022.

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